

EXHIBIT 6
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SB 423

ATTORNEY GENERAL
STATE OF MONTANA

Steve Bullock
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

June 28, 2010

Representative Diane Sands
Children, Families, Health, and Human Services Interim Committee
Montana State Capitol
Helena, MT 59620-1706

Dear Representative Sands:

There is widespread agreement in Montana that the voter-initiative passed in 2000, which permitted the use of marijuana for certain medicinal purposes, failed to establish a clear and effective mechanism for enforcement and regulation of the drug's use.

Many issues have been raised all across the state, in big towns and small communities and the existing law has created confusion for almost everyone involved – from law enforcement officers and landlords, to city council members and doctors.

In the past eight months, the Division of Criminal Investigation in my Department has given 86 presentations on medical marijuana to communities and law enforcement agencies throughout the state.

The enclosed document represents the most significant challenges the law enforcement community has identified in regards to the regulation of medicinal marijuana and enforcement of our law. That document also outlines possible solutions to these challenges. I hope they are of assistance to your committee as you tackle this difficult issue.

Like you, I am hopeful that the next legislature will look at the issues the state is facing and implement some commonsense regulations that ensure our communities stay safe and patients in legitimate need can access medication.

I know that many good ideas will surface in the legislative process – including a more comprehensive regulatory framework, such as the proposal from Powell County Attorney Lewis Smith to regulate caregivers. I hope that your committee feels free to rely on the continued assistance and expertise of my staff in your work.

I thank you for your dedicated work on this issue. If you should have any questions, please don't hesitate to contact either Deputy Attorney General Ali Bovingdon or Division of Criminal Investigation Administrator Mike Batista.

Sincerely,

A handwritten signature of Steve Bullock in black ink.
STEVE BULLOCK
Attorney General

SB:sj

Montana Medical Marijuana Act: Law Enforcement Concerns
Prepared by
Mike Batista, Administrator, Division of Criminal Investigation,
Montana Department of Justice
for
Children, Families, Health, and Human Services Interim Committee
June 28, 2010

Since the passage of the Medical Marijuana Act (hereinafter "MMA") by the voters in 2004, Montana's law enforcement community has struggled with enforcement of the law against individuals violating the law or stretching the limits of what it allows. In order to assist the Committee in defining the regulatory structure and addressing concerns raised in communities across Montana, the Department of Justice has synthesized the major challenges or issues identified by the law enforcement community.

I. Enforcement Challenges

- **Location of Grow Operations**

The MMA does not specify where marijuana for medical use, as defined by Mont. Code Ann. § 50-46-102, may be grown. LE has observed that marijuana is being grown out of state and brought into Montana for sale and consumption.

Possible Solution: Amend the MMA to clarify that marijuana for medical use as allowed by the MMA is restricted to marijuana actually grown in the state.

- **Caregiver-to-Caregiver Sales**

Current law limits the right of a caregiver to distribute medical marijuana (hereinafter "MM") only to specified card-carrying patients. Caregivers have advocated for allowing a caregiver to buy marijuana plants from other caregivers in order to maintain a sufficient supply of marijuana. Law enforcement (hereinafter "LE") is concerned that this contributes to the risk of diversion of MM for illegal purposes. Such an expansion would also make it difficult for a regulatory entity or LE to track MM sales.

Possible Solution: Do not expand law to allow caregiver-to-caregiver sales.

- **Transportation of Medical Marijuana**

Caregivers use employees to transport MM to patients or from grow locations to a caregiver's place of business. Allowing employees to transport MM creates a category of individuals that may possess MM, outside of the caregiver or patient status defined in the MMA.

Possible Solution: Amend the MMA to clarify that only a caregiver or patient may transport MM.

- **Background Checks for Caregivers and Employees**

The MMA provides that in order to act as a caregiver, an individual may not have a felony drug conviction. LE believes the law should be amended to exclude a person with any felony conviction from acting as a caregiver and that employees of caregivers should also be subject to the same criteria.

***Possible Solution:** Require fingerprint based background checks for caregivers and employees, and prohibit individuals with any felony conviction from acting as a caregiver or being employed by a caregiver.*

- **Affirmative Defenses,**

The affirmative defenses provided by 50-46-206, MCA undermine the limited regulatory structure provided by the law and make it more difficult to arrest and prosecute individuals who are using the MMA as a shield for illegal use.

***Possible Solution:** Amend the affirmative defense section to clarify that individuals are not immune from prosecution if they have not received a registry identification card, or in the case of a caregiver, complied with the provisions of Mont. Code Ann. 50-46-103; strike 50-46-206(3), as it allows possession beyond that which the MMA allows.*

II. Regulatory Structure

- **Caregiver License**

Current law requires DPHHS to issue a registry identification card to a caregiver designated in a patient's application. The law does not provide for independent identification or licensure of the caregiver. Without appropriate identification or licensure, and if the caregiver can not present the registry identification cards, it is impossible for LE to confirm that their possession of marijuana is legal.

***Possible Solution:** Amend the MMA to require licensure for caregivers and to require that a caregiver possess both their license and registry identification cards or be subject to a civil or criminal penalty.*

- **Access to Caregiver Grow Operations**

Caregivers are not required to disclose the location of grow operations to any regulatory entity. As a result, LE, city councils, health departments, building code inspectors, and many other regulatory agencies are unable to regulate these sites. LE devotes considerable resources (surveillance, investigation, interviews, search warrants, etc.) to investigate reports of illegal marijuana grow operations. Knowing the location of the grow sites and licensed caregivers and allowing for compliance checks by a regulatory entity would allow LE and other agencies to save resources and ensure that caregivers are operating within the boundaries of the MMA.

***Possible Solution:** Amend the MMA to require a caregiver to register the location of a business and any grow operations with DPHHS and make that list available to LE and other appropriate regulatory entities and provide for compliance checks by a regulatory body. Include an affirmative duty for a caregiver to update the list if additional operations are started or if locations change.*

- **Record Keeping**

Caregivers are not required to maintain transaction records. Some caregivers voluntarily track their product purchases; however the majority of caregivers do not maintain adequate records. Without complete records, there is no way for LE to confirm that the transactions were authorized by the MMA and there is an increased opportunity for MM to be diverted for illegal purposes.

Possible Solution: Amend the MMA to require caregivers to maintain records of transactions and other records as determined by the Legislature.

- **Registry Identification Cards**

A patient is not required to have the registry identification card in his or her possession. In the event that an individual is contacted by LE, it is extremely difficult to know if the person is an actual card holder. Nor is there 24-hour access to the database to verify an individual's status. LE is required to arrest the person, seize the marijuana, and expend time and resources dealing with the individual.

Possible Solution: Require patients to possess and present their registry identification card upon request of LE or be subject to criminal penalty.

- **License Revocation**

The MMA provides no consequence for a patient or caregiver violating the provisions of the law.

Possible Solution: Amend the MMA to allow for permanent revocation of a caregiver license or registry identification card if a caregiver or patient is convicted of a drug offense or violating the provisions of the MMA.

III. Clarification Needed

- **Allowable Number of Plants**

Montana Code Ann. § 50-46-201(2) provides that a qualifying patient and the patient's caregiver "may not possess more than six marijuana plants and 1 ounce of usable marijuana each." There has been confusion whether this section allows both the patient and a designated caregiver to possess the six plants and 1 ounce. For example, a husband and wife may each name themselves the caregiver for the other, and then argue they are each entitled to grow six plants as a patient and are also entitled to grow six plants as the caregiver, resulting in the possession of 24 plants as well as the additional 1/4 pound of usable MM. It is unclear whether this arrangement violates the MMA.

Possible Solution: Amend the MMA to clarify the allowable possession amounts for a patient and caregiver in the situation where a patient has a designated caregiver.

- **Definitions**

The statute fails to provide a definition of a plant. Marijuana plants can vary in size and quantity of potential product. Additionally the definition of usable marijuana is very broad and difficult to enforce when the form of ingestion is something other than plant material, i.e.) brownies, cookies, butter, tinctures, teas.

Possible Solution: Amend the MMA to provide clearer definition of these terms, looking to other states with MM laws for guidance.